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March 14, 1996

By Overnight Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M ST., NW (Room 222)
Washington, D.C. 20554

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RE: CS Docket No. 95-184 (Telecommunications Services Inside Wiring / CPE)

Dear Mr. Caton:

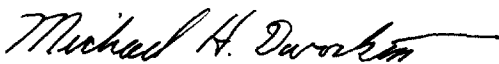
I have enclosed for filing an original and four copies of the "Joint Comments of Riser Management Systems, Wright Runstad & Company, and Rudin Management Company." Each of these parties has a direct and substantial interest in the implications of this rulemaking for the commercial properties industry. Each also has a broader interest in the future of modern and competitive telecommunications links throughout our nation and with our international partners.

Our comments praise the FCC's overall policies and its recognition of the need to address convergence issues. They also offer specific observations, drawn from extensive experience, upon the necessity for a clear demarcation point and upon the best structure for inside wire policies. With regard to access on multi-tenant properties, the comments recommend allowing customers to access multiple competing providers, over a single common cable distribution system. Finally, the comments emphasize one fundamental point: *existing market realities already create healthy incentives for commercial property owners to meet the communications needs of their clients, with little need for new regulatory mandates in this area.*

I would appreciate it if you would file these comments for consideration by the Commission in this proceeding. If you have any question about this filing or related matters, please call me at 800/ 747-3779.

Thank you for your attention to this matter.

Sincerely yours,


Michael H. Dworkin
General Counsel & Senior Vice President

cc: Roger Wright (AC)
John Gilbert (Rudin)
Jerry Marmelstein (RMS)

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riser/review/filings/FCC104LT.WPI)

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**Notice of Proposed Rulemaking In the Matter of Telecommunications Services:
Inside Wiring and Customer Premises Equipment.**

Joint Comments of: Riser Management Systems,
Wright Runstad & Company, and
Rudin Management Company

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Introduction

We file these comments upon the basis of the expertise and direct interests outlined below. In addition we share an interest in the broader significance of communications policies for all Americans. We congratulate the FCC on its overall policies and, in particular upon its recognition of the need to harmonize the rules and regulations applicable to converging telecommunications technologies. Upon the basis of extensive experience, we then recommend setting common demarcation points for all communications providers, at the point of least entry into private property consistent with reasonable access by providers. We note that mandatory access proposals conflict with physical constraints, and we suggest that customers in multi-tenant buildings have access to multiple providers over a common cable distribution system. We emphasize that *existing market realities already create healthy incentive for building owners to meet the communications needs of their clients, with little need for new regulatory mandates in this area.* We propose an overall structure that allows market forces to provide advanced and sophisticated communications technologies to commercial office properties, and to all users of multi-tenant buildings.

Statement of Interests and Experience

All three of the Joint Commenters are vitally affected by the vigor and efficiency of America's telecommunications policies; and all three have extensive experience with the pragmatic details of delivering services to tenants who require the most sophisticated of telecommunications services.

Riser Management Systems (Riser) provides telecommunications engineering and consulting services to the owners and managers of commercial properties, with a special emphasis on 'Class A' properties serving tenants with sophisticated and high volume telecommunications needs. In this role, Riser's engineers have physically examined, video-taped, analyzed and reported upon the telecommunications pathways in more than one hundred of America's most important commercial office buildings. In addition, Riser has reviewed, analyzed, or drafted almost one thousand leases and licenses defining rights and obligations of access for cable-TV, Internet service provision, wireless or rooftop use, shared tenant services and general telecommunications access and service offerings. Riser is firmly committed to the belief that providing tenants with ready and efficient access to advanced telecommunications services is in the best interests of the real estate industry, as well as for our entire society.

Wright Runstad & Company (WR&C) manages more than a dozen of the most commercially significant office properties in the Pacific Northwest, with an emphasis on large commercial office buildings in the Seattle-Bellevue area. WR&C's tenants include health-care providers, high-tech companies, trading and financial services, and professional services such as legal and accounting firms. They use and require a full range of current and emerging telecommunications technologies from multiple providers, with businesses that are critically dependent upon the vitality and efficiency of telecommunications links to regional, national, and international connections. WR&C has extensive experience in mediating between tenant desires and the offerings of shared tenant providers; and WR&C is actively involved in detailed negotiations, that will make a full range of cutting edge, high-quality, and reliable telecommunications services readily available to the tenants of the buildings that it manages.

The Rudin Management Company (Rudin) owns and manages the New York Information Technology Center in the heart of Manhattan's financial district, as well as thirteen other Class A commercial office buildings and twenty-two Class A apartment buildings in America's most active market for local telecommunications competition, the New York metropolitan area. Rudin's tenants include financial, advertising, entertainment and legal firms with a critical reliance upon telecommunications services, as well as Internet service providers, research and commodities companies, and others that are seeking (or providing) the very leading edge of emerging telecommunications service offerings.

Riser, WR&C, and Rudin all have 'hands-on' knowledge of the importance of ensuring that demanding and discerning users can achieve ready access to the finest of current and emerging telecommunications services from competitive providers. In the bluntest of terms, our businesses depend upon ensuring that tenants are happy with the telecommunications services that are available from within their buildings. We also have extensive experience with the myriad pragmatic details of ensuring that telecommunications service providers deliver these services in ways that harmonize their needs with the overall requirements of providing first-class tenant service in all other respects as well.

The FCC's Goals and Policies

The United States now stand at the threshold of a broad new world of communications possibilities. Much of the credit for this belongs to the FCC which, for decades, has consistently pursued overall goals of promoting competition, creating market incentives to reward technological innovation, and building a structure in which users -- customers -- can force providers to provide real value for their dollars through the simple threat to take their business to others if their needs are not satisfied. This year's Telecommunications Act in its broadest sense represents an affirmation of these policies by Congress, by the President, and by our society. The FCC, of course, now bears the responsibility for rulemakings that will turn those broad principles into marketplace realities. We encourage (and expect) the Commission to continue its consistent path of respecting those principles while it carries out this task.

The Reality of Convergence

Turning to the particulars of this rulemaking, we begin by applauding the Commission's recognition that technologies are in fact converging in ways that do require a harmonization of rules that are currently inconsistent. In building after building our experience shows that telecommunications services and cable-TV services are sharing more and more elements. For years these included common points of physical access (including both rooftop antennae and basement ducts) and common riser shafts and raceways. Now they also routinely include common ducts and conduits. Increasingly, they are including common cabling and, with the increasing deployment of broadband technologies, they are becoming virtually indistinguishable in terms of physical requirements and signal delivery capabilities. This trend is already a reality in many buildings that we have seen, and it is clearly growing across the nation. It is directly linked to the fact that customer premises equipment is also evolving to the point where sound, image, and data are all handled by common equipment and required by more and more users. The Telecommunications Act's provisions for common ownership of different service offerings will accelerate this trend but, in essence, it is merely affirming what is already a technological reality. Thus, this rulemaking is absolutely essential if the FCC is to bring its rules into harmony with the reality of current and growing provider -- and customer -- requirements. As the Commission works through these issues we strongly urge it, in the words of Commissioner Chong, to focus "on the *technical* characteristics of the service provided -- e.g. broadband or narrowband -- rather than on the *identity* of the provider." and to "reduce the regulatory burden and confusion among telecommunications providers, landlords and consumers alike."¹

Location of the Demarcation Point

We believe that one key step will be the crucial to reducing the current level of "regulatory burden and confusion." This is the creation of a single competitively neutral, readily defined and readily accessible, demarcation point between the networks of all communications service providers (including cableTV providers) and the wires of property owners and users. This is essential because providing users with a choice of multiple providers is the single most important step towards allowing market forces to promote customer satisfaction.

Thanks to the FCC's actions on inside-wire rules in recent years, the current system of demarcation points for traditional telecommunications services has moved towards this principle. However, it is still impaired by a system in which some providers have greater control than others over the final link to customers.

The goal should be a common demarcation point, a common multi-purpose cabling system on the customer side of that demarcation point, and (for multi-tenant properties) a right of virtual access to

¹ FCC 95-505, released 1/26/96. Separate Statement of Commissioner Chong, at 2.

multiple providers.² This model solves the problem of ensuring access to multiple providers, offering multiple kinds of services, while recognizing the sheer physical constraints that make it infeasible for each and every carrier to run separate and duplicative lines through commercial properties.

The problem of physical constraints should not prevent customers choosing from among competing communications companies. To solve the problem, however, it must first be recognized and addressed with candor and pragmatism.

Mandatory installation of separate lines by multiple providers is not the solution to this problem. The Joint Commenters have owned, managed, or done engineering work in more than a hundred of the finest buildings in the nation. Many of the buildings have room for the installation of additional communications lines; in such cases the owners have strong incentives to allow their installation. However, even within Class A portfolios there are many buildings in which conduits, riser shafts, entrance links, or crawl spaces are already crowded to a point that limits access, air-flow and heat dispersal. This is true even in cases where only one communications provider (the traditional local exchange carrier) has been installing plant in such spaces. It is even more true in cases where cableTV and customer equipment has been added to some building communications spaces. The number of local carriers now certified in Manhattan or Seattle can already be counted by the dozens. A prime (and positive) effect of the Telecommunications Act will be to allow similar numbers of local carriers to be certified in most major metropolitan areas. It should take only a moment of reflection to recognize that the installation of separate systems by each of those carriers will be physically impossible within the spaces that now exist at many sites.³

Expansion of existing communications spaces is not the solution to this problem. For many buildings it would require fundamental re-engineering of power, heating, ventilation, or air-conditioning, significant conflicts with building codes and standards, and extensive invasions of space that should be available for building use and tenant needs.

The solution that *is* feasible in these cases is straightforward: access to multiple providers over a common backbone cable distribution system within a building. The use of a single backbone system resolves the issue of scarce riser spaces; proper design of such a system can accommodate

² Virtual access provides consumers with a right to reach multiple providers over a core or backbone cable distribution system, managed by building owners to provide access on comparable terms and prices to competing communications service providers.

³ Our experience also indicates many cases in which communications providers each wish to ensure that their own wires are secured against uncontrolled access by their competitors' personnel. This requires significant additional space; and is almost impossible to provide without creating a single backbone system, with defined interconnection points.

both traditional and enhanced communications service offerings; and a making the system available to multiple providers at comparable terms and prices creates a competitively neutral path for signals between communications providers and customers.

As noted, the Commission has already made substantial progress toward this model through its inside-wire standards for telecommunications services in multi-tenant buildings. Additional transition periods may be necessary before this pattern is available to all users; and the Commission will have to act carefully to ensure that now-dominant providers do not force users to compensate them for the loss of their current competitive advantages.⁴ Ultimately, however it this model of customer access to multiple providers over a common backbone cable distribution systems is essential to the development of fully competitive communications markets, and the Commission should carefully, but clearly, adopt rules that allow consumers and providers to move on that path.

The Commission has asked whether this demarcation point should be inside or outside of each building's physical shell. We believe that this question is really less important than establishing the principle that it should be at the balance point between efficient access by providers and minimal entry into private premises. For this purpose, the traditional cable-TV distinction between residential and commercial properties is not relevant (indeed it is almost meaningless in many multi-use large buildings), but the distinction between single-tenant and multi-tenant properties is important and raises issues that we address below.

Access to Private Property

One fundamental observation deserves emphasis here: market forces already create a healthy incentive for building owners to maximize tenant satisfaction, with little need for new governmental regulation. In the highly competitive commercial property field (characterized by many unfilled building spaces), this means recognizing and meeting the needs and desires of sophisticated and demanding tenants. Communications needs have become a critical element in consumer satisfaction. They now ranking with traditional customer requirements such as:

- * physical safety and security,
- * ready but controlled access to building and tenant spaces, and
- * power, light and water.

Thus, in building after building, communications have become one of the prime factors in the 'product mix' that makes a specific rental site attractive to a potential tenant. Indeed, Rudin's experience with the New York Information Technology Center shows that, in some buildings and

⁴ US West's tariffs, for example, require each specific customer that requests a Minimum Point of Entry definition of demarcation points to pay the cost of relocating equipment and cabling. Whatever the merits of that policy for changes initiated by customer-choice, it should not apply to redefinitions of demarcation points for reasons of national policy. If costs do arise from such a policy change, they should be recovered broadly, over a time period approximating depreciation.

for some tenants, offering advanced communications services with access to multiple providers can be an extremely powerful way of enhancing the value of a building.

This has three important implications. First, it means that tenants' communications are being given close and respectful attention by managers who know that the value of their properties depends upon meeting those needs. Second, it means that tenants and landlords are consciously and actively engaged in a joint process of balancing those communications needs with other consumer desires. Finally -- and most importantly -- it means that there is little need for governmental fiat in this area. Thus, we believe that the commission should adopt a general presumption that arms' length negotiations among providers, tenants, and building owners will produce just and efficient access agreements.

This marketplace balancing of multiple concerns is, of course, typical of most commercial access, lease, license or rental arrangements. In this sense, communications access questions are only a special example of issues (such as insurance and indemnification requirements) that have been addressed in exhaustive detail by the commercial property industry in, literally, thousands of agreements over many decades. A few examples can only begin to indicate the scope of issues that are best resolved by market negotiations in which tenants can tell building managers how they wish to balance such concerns as:

- * whether uncontrolled access by personnel of multiple providers raises tenant concerns about physical safety in buildings,
- * whether the noise and disruption of construction of multiple systems interferes with (or is justified by) business needs,
- * whether unrecorded access to building systems raises tenant concerns about privacy and business secrets, or
- * whether congested riser closet spaces lead to heat and ventilation issues that affect equipment performance or human comfort levels.

Well drafted telecommunications license agreements already exist, and address these and many other issues. Private parties can use these as models for addressing these concerns on a site-specific basis. In contrast, replicating those agreements -- and their infinite possible permutations -- in the *Federal Register* would consume endless FCC resources in an unneeded and harmful activity. Even more importantly, it would be a strangely ironic step backwards, in striking contrast to the legislative, administration, and Commission policies of respecting market forces.

Customer Access to Wiring

A simple principle seems appropriate as a starting point here. Every party (whether it be providers, property owners, or end users) should have ready access to the wires, cables, and equipment that

they own and have installed. For rental properties, the terms of this access should be established through market-based negotiations, against the background of state property law and existing leases. In practice, this will usually mean that tenants will be able (consistent with safety codes, power requirements and similar constraints) to access whatever customer premises equipment (including cable-TV equivalents) they have installed *within their rented premises*. In addition, they should have the right to negotiate with building owners to define, through arms-length negotiations, the responsibility for any horizontal runs necessary to connect customer premises equipment with interconnection points to a building's backbone communications system or directly to a provider. In cases where building owners have established backbone cabling systems, they will be responsible for ensuring consistent delivery of service, while allowing communications service providers access to interconnection with that backbone system for the purpose of providing services to building occupants. Communications providers who are licensed to install their own cabling systems in multi-user buildings will be able to negotiate terms of access as elements of their overall license agreements.

Summary

This rulemaking is an essential step towards furthering the goals that the FCC has pursued for decades and that are reaffirmed by the Telecommunications Act. Those goals include a reliance on market forces whenever feasible, a focus on technology enhancement through standards that coordinate but seldom restrict, and a deep respect for consumers' ability to make their own reasoned choices about how to balance their many goals. Focusing on technologies rather than on providers will help those goals. Establishing a competitively neutral, readily accessible demarcation point is perhaps the single most important step towards clearly defining user choice. Market forces and developing commercial practices already afford a path to the future for multi-tenant buildings and their occupants and mandatory access requirements will disrupt all parties' efforts to pursue that path. The Commission can best achieve its goals if it sets out consistent technological requirements and respects the power of de-regulated actors to move forward with creative -- and *voluntary* -- commercial arrangements about the deployment and installation of those technologies.

For questions upon these comments, please contact:

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